



General Assembly

Sixty-third session

Official Records

Distr.: General
3 November 2008

Original: English

Sixth Committee

Summary record of the 9th meeting

Held at Headquarters, New York, on Monday, 20 October 2008, at 10 a.m.

Chairperson: Mr. Al Bayati (Iraq)

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08-56031 (E)



The meeting was called to order at 10.05 a.m.

Agenda item 74: Report of the United Nations Commission on International Trade Law on the work of its forty-first session (A/62/17 and A/63/17)

1. **Mr. Illescas Ortiz** (Spain), Chairperson of the United Nations Commission on International Trade Law (UNCITRAL), said that he would be introducing both the Commission's report on its resumed fortieth session (A/62/17, part two), held in December 2007, and its report on its forty-first session (A/63/17), held in June-July 2008. At the resumed fortieth session, the Commission had completed its adoption of the draft UNCITRAL Legislative Guide on Secured Transactions (A/62/17, para. 100). It had recommended that all States should make use of the Guide in view of the importance to all countries of a secured transactions regime for promoting access to secured credit. At the Commission's forty-first session, the main item on its agenda had been consideration of the draft Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea (A/63/17, annex I).

2. The finalized text of the draft Convention, which was the culmination of more than six years of international negotiations involving as many as 80 States, was the result of a series of compromises reached within Working Group III (Transport Law) under his chairmanship. It was designed to provide predictable, uniform rules for the international transportation industry in the current globalized economy. While a number of attempts had previously been made to modernize the system based on the 1924 Hague Rules, in particular through the 1968 Visby Protocol and the 1978 Hamburg Rules, no international regime for the carriage of goods had ever been accepted to the same extent as the 1924 Rules; in addition, a number of States had not become parties to any international convention in that area, preferring to rely on their national law. The need for new international rules was made especially acute by a number of factors. Seaborne trade accounted for 89.6 per cent of global trade in terms of volume and 70.1 per cent in terms of value; the rapid increase in container transport over the past 50 years had led to a radical shift from port-to-port carriage to multimodal door-to-door carriage, which was not covered by the current international regime; similarly, existing maritime conventions did not offer a reliable legal

basis for replacing traditional bills of lading by electronic transport documents, which were increasingly used; and lastly, a number of important aspects of international maritime transportation were not regulated by the exiting international regime and therefore remained subject to national law, which was detrimental to overall harmonization.

3. The UNCITRAL draft Convention was a comprehensive instrument that modernized the law by adapting it to present-day commerce, not only in the new area of electronic records but also by providing, for the first time in international maritime law, detailed rules on delivery and right of control of goods. Moreover, it codified decades of case law and practice and, where necessary, clarified earlier texts. By doing much more than revising the liability regime for door-to-door carriage, it would ensure certainty and uniformity in an area formerly characterized by competing regimes and thus improve conditions for international trade, enhance the efficiency of commercial transactions, reduce the cost of international business and avert the risk of countries seeking to regulate multimodal transport on the national level or to develop regional approaches. Once adopted, it could be expected to enter into force swiftly, ushering in a new era for the international carriage of goods by sea. The Sixth Committee's decision on the draft convention was therefore important; he hoped that it would be favourable.

4. Working Group I (Procurement) had continued to discuss proposals for the revision of the 1994 UNCITRAL Model Law on Procurement of Goods, Construction and Services to reflect new practices, in particular those resulting from the use of electronic communications and practices in procurement. It had turned its attention to the framework agreement or indefinite-delivery-indefinite-quantity contract. It had also discussed the issue of suppliers' lists and had decided that they did not need any further provision in the Model Law.

5. Working Group II (Arbitration and Conciliation) had made rapid progress in revising the 1976 UNCITRAL Arbitration Rules, a text which was expected to be completed during the Commission's next session, in 2009. The Working Group attached great importance to transparency in investor-State arbitration and had asked the UNCITRAL Secretariat to undertake research on current practices in that regard. It had decided not to include specific

provisions on treaty-based arbitration in the Rules but to leave them to be dealt with separately upon completion of the current revision. It had also decided to maintain the issue of arbitrability and online dispute resolution on its agenda.

6. Working Group V (Insolvency Law) had made good progress in considering the national treatment of corporate groups in insolvency. It was moving towards finalization of the topic and would start considering international issues for corporate groups in insolvency at its next session. It would also consider a note prepared by the Secretariat on current practice, particularly in the use and negotiation of cross-border agreements, with a view to offering guidance to lawyers and judges for the international treatment of corporate groups in insolvency.

7. Working Group VI (Security Interests) had been asked to prepare an annex to the UNCITRAL Legislative Guide on Secured Transactions, dealing specifically with security rights in intellectual property. Because of the impact of insolvency on such rights, the Commission, upon the recommendation of the Working Group, had decided that Working Group V (Insolvency Law) should be invited to give a preliminary opinion on the matter at the next session and that the two Working Groups should have the possibility thereafter of a joint discussion of any remaining issue.

8. In the area of electronic commerce, the Secretariat had continued to follow technological developments that might affect international trade law, particularly the concept of a single window, which could enhance information availability and handling, simplify information flows between trade and Government sectors and lead to greater harmonization and exchange of information between governmental systems. The Commission had therefore recognized the value of a study of the legal aspects of cross-border single window systems, to which it could contribute, preferably in cooperation with other relevant organizations, with a view to the development of comprehensive international benchmarks for all stakeholders; such benchmarks would also serve to promote the use of UNCITRAL standards in the countries using them. Working Group IV (Electronic Commerce) would be convened to take the matter forward in 2009, if warranted by the progress of work. Another proposal for future work on legal issues related to electronic equivalents to negotiable documents and other electronic systems for the

negotiation and transfer of rights had been set aside for the time being.

9. The UNCITRAL Secretariat had been doing useful work in the area of commercial fraud. In 2007, it had prepared a note, which had been circulated to Governments for comment, identifying 23 indicators of commercial fraud. In view of the positive response, the Commission had decided to publish it for purposes of education and fraud prevention, after some adjustments and additions. Moreover, the Secretariat was continuing to cooperate fruitfully with the United Nations Office on Drugs and Crime on various aspects of fraud, including identity fraud.

10. The Commission was actively monitoring the legislative implementation of the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention), in collaboration with the International Bar Association. It had considered a written report on the subject, covering its implementation, interpretation and application by States, based on their replies to a questionnaire, and setting out recommendations for future work, notably the application of national rules of procedure to matters on which the Convention was silent. The Commission had decided that, in order to eliminate or limit the effect of legal disharmony in that field, a guide to enactment of the Convention should be prepared; it had accordingly asked the Secretariat to study the feasibility of preparing such a guide. The replies of States to the questionnaire would be published in their original language on the UNCITRAL website; they should therefore, in the interests of accuracy, include the most up-to-date information, which he urged States to provide.

11. The Commission on Arbitration of the International Chamber of Commerce, which had undertaken a similar project, had been collaborating with the Secretariat; he hoped that further opportunities for joint activities between the two institutions would be identified in the future to promote the New York Convention. He drew attention to a conference that had been held in New York on 1 February 2008 to celebrate its fiftieth anniversary.

12. The Commission's technical assistance activities, which continued to form an essential part of its work, were funded by the UNCITRAL Trust Fund for Symposia, which was sorely in need of further donations. He urged States to help maintain the

Commission's support for law reform, either through multi-year or specific-purpose contributions, so as to meet the increasing requests from developing countries and countries in transition for technical assistance.

13. Case law on UNCITRAL texts (CLOUT) continued to be an important aspect of the Commission's overall technical assistance activities. As at 8 April 2008, 761 cases had been prepared for publication, dealing mainly with the United Nations Sales Convention and the Model Law on International Commercial Arbitration, but also including for the first time cases concerning the UNCITRAL Model Law on Cross-Border Insolvency. In view of its importance, the CLOUT system deserved to be strengthened. In addition, the much-visited UNCITRAL website had been updated and constituted, along with the UNCITRAL law library and UNCITRAL publications, an important information source and tool for technical assistance activities.

14. The harmonization and unification of international trade law required active cooperation and coordination among rule-formulating organizations. In developing a more proactive approach to the Commission's coordination role, the Secretariat, encouraged by the General Assembly, had taken steps to engage in dialogue with interested organizations, most recently with the secretariats of the Hague Conference on Private International Law and the International Institute for the Unification of Private Law.

15. The Commission had continued to consider its methods of work. It had been widely felt that it should continue to operate preferably by a consensus of States, without however defining "consensus". It had felt that the role of observers should be preserved and that transparency was a desirable objective. The Secretariat had been asked to prepare a reference document, based on its note on the subject, but of a more normative character.

16. He referred, lastly, to the General Assembly initiative regarding the strengthening of the rule of law, which the Commission hoped would lead to comprehensive and consistent approaches within the United Nations system to building and promoting the rule of law. The current sporadic and fragmented approaches did not achieve lasting results. With their primary focus on criminal and transitional justice, including judicial and police reforms, they overlooked

long-term measures and the economic dimension. To build a culture based on the rule of law, it was essential to lay down foundations for long-term stability, development, empowerment and good governance. Commercial law reforms and UNCITRAL activities were therefore relevant.

17. **Mr. Eriksen** (Norway), speaking on behalf of the Nordic countries (Denmark, Finland, Iceland, Sweden and Norway), said that he appreciated the Commission's efforts to coordinate with other international organizations and bodies active in the field of international trade law, in particular its recent efforts to clarify the relationship between the various legal texts adopted by different organizations concerning security interests.

18. During its forty-first session the Commission, after years of hard work, had agreed on a draft Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea (A/63/17, annex I). Important steps had been taken by Working Group I (Procurement) in revising the 1994 UNCITRAL Model Law on Procurement of Goods, Construction and Services with Guide to Enactment to reflect new practices, particularly those resulting from the use of electronic means of communication. The Nordic countries strongly supported and were actively participating in the efforts of Working Group II (Arbitration and Conciliation) to revise the UNCITRAL Arbitration Rules, which, although widely recognized as a very successful text, had not been amended since their adoption in 1976. The Nordic delegations welcomed the progress made by Working Group V (Insolvency Law) in analysing the treatment of corporate groups in insolvency and looked forward to discussing the compilation of practical experience with negotiating and using cross-border insolvency agreements currently under preparation by the Secretariat. The Nordic countries welcomed the finalization and adoption of the UNCITRAL Legislative Guide on Secured Transactions and noted with satisfaction the progress made on the annex dealing with security rights in intellectual property. With regard to the Commission's working methods, the Nordic countries looked forward to completion of the draft reference document for use by chairpersons, delegations and observers. Open and lively discussions in the working groups were the rule and contributed to the excellent results achieved.

19. **Mr. Hafner** (Austria) said that the Commission's most important achievement during the past year was undoubtedly the finalization of the draft Convention on the carriage of goods, which governed door-to-door transport operations involving a sea leg. In view of its broad scope, the Convention would be important not only for large seafaring nations but also for landlocked States, such as Austria.

20. The completion and adoption of the UNCITRAL Legislative Guide on Security Transactions would facilitate secured financing and thus promote access to low-cost credit and enhance trade. His delegation also commended the progress made on the revision of the Model Law on Procurement of Goods, Construction and Services and the UNCITRAL Arbitration Rules, and it welcomed the comprehensive review by the Commission of its working methods.

21. His delegation particularly welcomed the Commission's discussion of its role in promoting the rule of law at the national and international levels. The implementation of modern international trade law standards was essential in advancing the rule of law, promoting sustained economic development and eradicating poverty and hunger. Promotion of the rule of law in commercial relations should be an integral part of the broader rule of law agenda at the United Nations, and the Commission should play a key role in that field.

22. **Ms. Hamed** (Australia) reiterated her delegation's support for the Commission's efforts to harmonize trade law and reduce barriers to trade and, despite differences, particularly over volume contracts, acknowledged the hard work involved in trying to produce a workable and modern instrument on the carriage of goods wholly or partly by sea. She was grateful to the Comité Maritime International for producing the initial working draft of the relevant Convention and to the Government of the Netherlands, which had offered to host a signing ceremony.

23. Her delegation took note of the achievements in the areas of procurement, security interests and insolvency law. It commended the progress on the revision of the UNCITRAL Arbitration Rules and the decision to examine the topic of transparency in treaty-based investor-State arbitration as a matter of priority immediately after completion of the revision. In the area of electronic commerce, it supported the decision to work with the World Customs Organization in

identifying legal issues arising from the use of single windows in international trade. Her delegation also supported the Commission's efforts to identify and compile indicators of commercial fraud and, more generally, to promote the rule of law and provide technical assistance and expertise.

24. **Mr. Shaustsov** (Belarus) welcomed the finalization of the draft Convention set out in document A/63/17, annex I. Once in place, the Convention would reduce costs arising from the existence of a variety of different customs and practices applying to contracts for the international carriage of goods. It was important to pursue work on the draft Convention and to secure the maximum number of participants, so as to bring about a universal regime for multimodal transport. His own country was intending to accede to the future Convention.

25. The proposed updating of the Model Law on Procurement was also of interest to Belarus, which was currently refining its own legislation in the light of the practice of other States and new trends in international law. Model laws played an important role in harmonizing national laws, especially in a climate of globalization and interdependence. The work of Working Group III on new international rules to regulate the liability of the carrier and shipper was of great interest to Belarus. According to expert estimates, the cost of goods increased by 1 per cent each day spent in transit. In that connection, the Commission's continuing work on creating a legal basis for electronic commerce saved time and expense when conducting international trade transactions. However, the greater accessibility of electronic commerce to developed countries, as compared with developing ones, could reduce the competitiveness of the latter's goods on foreign markets. A more active role should be secured for developing countries in the work of Working Group IV. It was also important to keep up with the rapid advances in information and communications technology, so that changes in the law could go hand in hand with technological changes. His delegation was therefore in favour of preparing a comprehensive reference document on the subject of electronic commerce, and of cooperation between the Commission and the World Customs Organization (WCO) in that area. The analysis made by Working Group IV of the legal issues arising out of the use of single windows in international trade was widely used in Belarus to simplify administrative procedures.

26. His delegation reaffirmed its position on the need for a careful approach to possible changes in the Arbitration Rules, to avoid their being politicized and so rendered less effective. It would not be useful to provide for the participation of non-governmental human rights organizations in the arbitration process, because that would slow down the process as well as politicizing it. As for the gathering and dissemination of information about judicial and arbitral decisions based on the Commission's conventions and model laws, Belarus was represented in that respect by the President of its Supreme Commercial Court and had built up close contacts with the Commission in that field, which had in turn simplified the exchange of information about the practice of the law. The wide dissemination, in all six official languages and in both printed and electronic form, of materials containing extracts from judicial and arbitral decisions based on the Commission's texts would contribute to a uniform interpretation and application of those texts.

27. His delegation greatly appreciated the progress made in improving the Commission's work, and especially its working methods. Observers played an important role, and their status and the arrangements for their participation should be clearly defined. The participation of non-governmental organizations should be provided for on the basis of equitable representation, both as to geography and as to legal systems. As for the decision-making process, he supported the Commission's view that most decisions should be reached by consensus, and that only States members of the Commission should have the right to vote.

28. He paid tribute to the work of the Secretariat of the Commission and expressed the hope that its technical assistance activities for the benefit of poorer countries would be boosted by donor funding.

29. **Ms. Rodríguez-Pineda** (Guatemala) said that, as a State member of UNCITRAL, Guatemala was well aware of the importance of the Commission's work for economic development. A prime example during the past year was the finalization of the draft Convention on Contracts for the Carriage of Goods Wholly or Partly by Sea, which modernized and harmonized the often obsolete legal framework currently applied in many countries, including her own. The draft Convention had the potential to contribute to a general reduction in transaction costs, improve legal certainty

and increase mutual confidence between parties in international trade.

30. On the topic of secured transactions, she was pleased to announce that in January 2008 a new Security Interests Act had entered into force in Guatemala that was completely in harmony with the Legislative Guide on Secured Transactions and had earned praise from the World Bank. Guatemala appreciated the technical assistance rendered by the Commission and other bodies. Implementation was still in the early stages and a few difficulties had been encountered. The Registry of Security Interests called for by the Act should be operational within a few months; temporarily the General Property Register was recording the transactions covered by the new law. With regard to security rights in intellectual property, Working Group VI (Security Interests) should continue its work but should maximize synergy and avoid duplication with Working Group V (Insolvency Law).

31. There was an urgent need for contributions to the UNCITRAL Trust Fund for Symposia so that the Commission could respond to requests from developing countries for cooperation. Since the Commission was the key body in the United Nations system in the area of international commercial law, it was important to achieve broader participation by representatives of developing countries that were members of the Commission. In that regard, her delegation supported a comprehensive review of the Commission's working methods and looked forward to considering a draft reference document at the next session of the Commission. Any new guideline in that area should maintain the rule of consensus as the preferred method of decision-making, while recognizing voting as a right of member States.

32. **Mr. Yokota** (Japan) said that Japan had been a member of the Commission since its inception and would continue to participate actively in its work. It hoped that its recent accession to the United Nations Convention on Contracts for the International Sale of Goods, one of the Commission's most successful outcomes, would encourage other States to accede to it as well.

33. The UNCITRAL Arbitration Rules had been widely and effectively used in international arbitration. His delegation hoped that the revision of the Rules would be beneficial to and welcomed by practitioners. It was satisfied with the substantive deliberations

taking place in Working Group II (Arbitration and Conciliation) and would exert its best efforts towards completion of the task at the next session.

34. It had long been recognized that there was a need for a uniform legal framework for the international carriage of goods by sea and that the existing rules were inadequate for modern practice. The draft Convention on the subject (A/63/17, annex I), approved at the Commission's forty-first session, addressed that problem. Those who had participated in the deliberations were aware how difficult it had been to reach a conclusion on some of the controversial issues; the intensive effort exerted should make the Convention stronger in the long term.

35. Believing that it was important for every State to examine carefully how enterprise groups should be treated in the context of insolvency, his delegation would support and contribute to the current project on that issue of great practical significance. With regard to security interests, the formulation of legislative guidelines on security rights in intellectual property would be beneficial in view of the increased importance of intellectual property rights worldwide; his delegation welcomed the remarkable progress that had been made on that topic.

36. **Mr. Sethi** (India) said that the Commission's adoption of the draft Convention on the carriage of goods was an important development in the law relating to the transport of goods by sea. The draft Convention established a comprehensive legal framework, filled gaps in existing transport regimes and incorporated some new features of benefit to parties to a contract of carriage. The increased limits of liability and the extended liability for carriers should benefit shippers, particularly those in developing and least-developed countries that were consumers of transportation services. The new legal regime would generate greater confidence in those doing business internationally. His delegation had actively participated in negotiating the draft Convention and supported its adoption.

37. On other topics, the compilation of practical experience with negotiating and using cross-border insolvency agreements should be a useful source in the search for solutions in the international treatment of enterprise groups in insolvency. In the area of electronic commerce, his delegations supported the proposed study of the legal aspects involved in

implementing a cross-border single window facility. As for the comprehensive review of the Commission's working methods, inclusiveness and transparency should be borne in mind as key elements. Fraud was an issue of growing concern to international trade, and the indicators of commercial fraud being prepared by the Secretariat could help combat harmful practices. Lastly, his delegation appreciated the continuing efforts to collect case law on UNCITRAL texts and commended the Secretariat for its wide range of technical assistance activities.

38. **Mr. Wang Chen** (China) said that his delegation took a positive view of the legislative purposes of the draft Convention approved by the Commission but regretted the failure to reach better compromises on certain aspects that might negatively affect its entry into force and application. His delegation was pleased to note that the drafting of other international instruments, model laws and legislative guidelines was progressing smoothly in new areas of international trade development, and it pledged its support in the process.

39. Fifty years after the adoption of the New York Convention, its broad implementation testified to the Commission's indispensable role in the unification of international trade law and to the global reach of the Convention itself. In parallel to the activities organized by the Commission, commemorative activities had also been organized in China.

40. His delegation also valued the Willem C. Vis International Commercial Arbitration Moot competition for law students hosted by the Commission, as the young contestants of 2008 were likely to be the legal authorities of the future. Such activities provided a valuable opportunity for young legal talents to become involved in the implementation of international commercial rules and to deepen their understanding of the importance of unifying global trade law.

41. **Mr. Kuzmin** (Russian Federation) said the Commission, in preparing the draft Convention on the carriage of goods, had struck an acceptable balance between the respective interests of the carriers and the shippers. Regarding the work on arbitration and conciliation, he agreed with other delegations that it should not be confined to the current work on the Model Rules. Once that was completed, attention

should be paid to investor-State dispute settlement and the transparency of proceedings.

42. The work of the Commission's working groups on procurement, insolvency law and security interests had been fruitful, as had the discussions about working methods. Concerning the latter, he took the view that the Commission's decision-making should be based on consensus. Its work should be transparent and its materials readily available, and observers should be enabled to participate according to the existing procedures.

43. **Ms. Bajrai** (Singapore) said that the Commission's work in harmonizing and modernizing the legal rules applicable to cross-border transactions helped promote certainty, generate confidence and reduce the cost of international trade. Her delegation was particularly pleased at the successful completion of the draft Convention (A/63/17, annex I), an ambitious undertaking full of difficulties and extremely costly. Given that such costs might lead some countries to apply their resources elsewhere than at Commission meetings, the Commission should re-examine its working methods to determine how it could optimize such resources.

44. In that regard, her delegation welcomed the decision to have the Secretariat formulate written guidelines for procedure at Commission meetings; a common understanding would lessen the wide divergence in practice among the different UNCITRAL working groups and at Commission meetings, particularly as to decision-making procedures, and clarify the roles of the participants. Her delegation supported the current practice of including non-governmental organizations, particularly trade and professional organizations with expertise in the subject area being addressed, but care should be taken to ensure that only those non-governmental organizations that could contribute to the deliberations were invited to participate; granting observer privileges to organizations with other agendas could lead to disruption and unnecessarily prolong deliberation. Since the Commission was an intergovernmental body, there must be a point beyond which the preferences of non-State participants were not allowed to prevail over the views of member States.

45. **Mr. Al-Baker** (Qatar) said that, given the manner of its composition, the Commission was best placed to shape legal values that would reduce or remove the

obstacles posed to the flow of international trade by the assortment of national regulations governing the subject and ultimately achieve the aim of harmonizing international trade law. He welcomed the progress accomplished by the Working Groups in general and by Working Group III (Transport Law) in particular, which had culminated in the major achievement of finalization and approval of the draft Convention on Contracts for the International Carriage of Goods Wholly or Partially by Sea. Indeed, the carriage of goods by sea remained the main method of transport in international trade, and in that light he proposed the organization of seminars and workshops to clarify issues newly covered under the draft Convention. The preparation of an explanatory note would also be desirable.

46. In updating the UNCITRAL Model Law on Procurement of Goods, Construction and Services with Guide to Enactment, care should be taken not to depart from the basic principles of the Model Law or modify provisions of proven usefulness. Furthermore, any revision of the UNCITRAL Arbitration Rules should not alter the structure of the text, its spirit or its drafting style and should respect the flexibility of the text, rather than make it more complex, thus ensuring its continued use in many different instances, for example in investor-State disputes. More attention should be devoted to training and technical assistance for developing countries in particular, which would strengthen the Commission's role and also broaden understanding of its efforts in the field of international trade law. Lastly, the uniform interpretation and application of UNCITRAL texts would undoubtedly be promoted by the collection and dissemination of case law on UNCITRAL texts (CLOUT) in all six official languages of the United Nations.

47. **Mr. Chamlongrasdr** (Thailand) welcomed the completion of the draft Convention on the carriage of goods and expressed appreciation of the work of the Commission's working groups. International trade law played a crucial role in enhancing economic growth, and his country was committed to its modernization. National laws must be harmonized with international ones, to reflect the level of global cooperation and economic integration. As the current Chair in Office of the Association of Southeast Asian Nations (ASEAN), Thailand had hosted the fifth ASEAN Law Forum in May 2008. The meeting had brought forward the proposal that ASEAN should consider adopting both

the United Nations Convention on Contracts for the International Sale of Goods and the United Nations Convention on the Use of Electronic Communications in International Contracts, and should work closely with the Commission on technical assistance.

48. He welcomed the progress in Working Group II on the revision of the UNCITRAL Arbitration Rules, which would modernize the rules for arbitration proceedings while maintaining their simplicity and consent-based character. Thailand was currently developing its own comprehensive insolvency law, and was taking an active part in the Commission's work on that subject. He also welcomed the work being done on procurement and on security interests, especially those in intellectual property.

49. Concerning future activities relating to electronic commerce and commercial fraud, he noted that Thailand was already using single windows to facilitate international import and export. He also welcomed the Commission's initiative in preparing indicators of commercial fraud.

50. **Mr. Alday González** (Mexico) welcomed the finalization of the draft Convention as a useful tool in maritime law and a source of uniform standards. In the work on the Model Law on Procurement, he was glad to note that the revised version would include provisions to regulate framework agreements. Innovative practices and methods in public procurement reflected current needs and should be taken into account in the revision. Provision should also be made, however, for traditional mechanisms by which developing countries could enjoy greater transparency and legal certainty in their public procurement practices. He welcomed the inclusion in the Model Law of provisions to regulate conflicts of interest; such provisions were essential to ensure the transparency and legality of procurement contracts. He also welcomed the continuing debate around functional equivalence, the security of information, authenticity and confidentiality.

51. The Commission's Arbitration Rules were among its most successful products, having been adopted by a number of arbitration bodies. He endorsed the Commission's decision to complete the revision very shortly, so that it could focus on investor-State arbitration. He urged Working Group II to pursue, at its next session, the questions of arbitration in particular types of cases and the impact of electronic

communications on dispute settlement. He welcomed the fiftieth anniversary of the adoption of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, which had proved of indisputable value in the settlement of disputes and had brought greater legal certainty to the practice of commercial arbitration. The General Assembly had played a valuable role in promoting the Convention regime and in disseminating information on its interpretation and application.

52. Trademarks, patents and copyright were an important part of the assets owned by companies, and it was important to coordinate the legal regime for intellectual property with the regime for secured financing. The work of Working Group VI in preparing an annex to the draft Legislative Guide specifically dealing with security rights in intellectual property was therefore of special interest. He was glad to note the proposal for a joint discussion, between Working Group VI and Working Group V, of the impact of insolvency on a security right in intellectual property.

53. Concerning possible future work in the area of electronic commerce, he welcomed the invitation addressed to the Secretariat by the World Customs Organization (WCO) and the United Nations Centre for Trade Facilitation and Electronic Business (UN/CEFACT) to cooperate with them in that area, opening the prospect of wider promotion and use of the legal instrument to be elaborated by the Commission. He also welcomed the progress made by Working Group V on insolvency law, and especially that on the treatment of corporate groups in insolvency and post-commencement finance.

54. With regard to the Commission's working methods, he agreed with other delegations that decision-making should be based on consensus. Moreover, the role of observers should be confined to technical support and should not be extended to decision-making or voting.

55. **Mr. Tchatchouwo** (Cameroon) said that reform of international trade law was a prerequisite to stability and development. The Commission's technical assistance to States seeking to improve their international trade played an essential role in promoting the welfare of their peoples. The Commission needed greater capacity to fulfil its mandate in that regard.

56. The new draft Convention (A/63/17, annex I) was a valuable instrument of international trade and would offer new outlets to contractors and markets hitherto isolated. It ought however to have included provisions on certain vitally important matters, specifically, non-maritime incidents such as fires in vehicles other than ships, or the transport of goods in uncovered trucks. The contractual definition of "volume" failed to take account of cases in which the contract allowed for successive dispatches of goods by road. In the matter of evidence, the draft placed an excessive burden on the shipper by requiring him to define the exact time when the loss or damage occurred. Such lacunae served as a reminder that compromise must be sought in future negotiations, taking account of all the interests involved.

57. He welcomed the progress made by Working Group I in revising the Model Law on Procurement in the light of new current practices and technologies. The current revision of the UNCITRAL Arbitration Rules should proceed without altering the spirit of the Rules. As for the work on security interests, his delegation was eager to know whether matters relating to the impact of insolvency on a security right in intellectual property were sufficiently linked with the law on secured transactions to justify their being discussed in the annex to the draft Legislative Guide. The answer to that question would help States to make the necessary legislative changes of their own.

58. With regard to possible future work in the area of electronic commerce, it would be useful to hold a colloquium to review the matters on which the Commission might take the work forward. Another helpful contribution to the work on arbitration and conciliation would be a detailed guide to State practice in implementing the 1958 New York Convention, with a view to promoting its uniform interpretation and application.

59. The working methods of the Commission called for careful reflection and good faith negotiations so as to enhance its effectiveness in future.

60. He concluded by appealing to donors for additional funds to meet the growing demand from the developing countries for technical assistance from the Commission and for funds to meet the cost of travelling to its meetings.

61. **Mr. Badji** (Senegal) said that the draft Convention (A/63/17, annex I) would modernize the

rules governing the carriage of goods and promote legal certainty. Since the efforts made to finalize the draft text had made it possible to resolve a number of difficult issues, his delegation strongly supported the Commission's recommendation that the General Assembly should consider the draft Convention with a view to adopting it at its sixty-third session and authorizing a signing ceremony in Rotterdam, The Netherlands in September 2009.

62. The headway made by Working Group I on updating the UNCITRAL Model Law on Procurement of Goods, Construction and Services with Guide to Enactment was encouraging, since the end product would be a modern instrument in step with the remarkable advances in the field of information and communication technologies which had revolutionized international trade. He therefore encouraged the Working Group to continue its work in order to ensure that the Model Law reflected new practices stemming from the use of electronic communications and electronic trading in public procurement.

63. Any revision of the UNCITRAL Arbitration Rules to incorporate more detailed provisions on investor-State disputes, or on administered arbitration, should not alter the spirit of the Rules, because they were already used by many arbitration centres. Hence it would be wise to adopt a generic approach to all types of arbitration.

64. Turning to the initiative to review the Commission's working methods, he said that, while it was necessary to reaffirm that voting was a right conferred on member States under the Charter, decisions should normally be taken by consensus; a cautious approach was required, however, to any attempt to define "consensus". As for the working methods of the Secretariat, an effort must be made, within existing resources, to increase the availability of working drafts and other preparatory materials used by the Secretariat in its two working languages and possibly in other official languages and to provide simultaneous interpretation at expert group meetings convened by the Secretariat.

65. Given that the promotion of international trade and economic cooperation among States was vital for States' prosperity and economic development, more should be done to spread knowledge about international trade law. To that end, UNCITRAL should be given the financial and human resources it

required it order to play its proper role in the areas of technical cooperation and assistance with the reform and promotion of international trade law.

66. **Mr. Renié** (France) said that the final version of the draft Convention on the carriage of goods (A/63/17, annex I) contained some really innovative provisions and represented progress in that its provisions on the carrier's responsibility offered some highly desirable safeguards with regard to freedom of contract. The approach adopted by Working Group I on public procurement and by Working Group II on arbitration was satisfactory. The latter group was right to confine its endeavours to updating the UNCITRAL Arbitration Rules, while trying to keep the conciseness and spirit of an instrument that was widely used throughout the world. That work must be completed before the Working Group began any examination of the topic of investor-State arbitration.

57. When considering corporate group insolvency proceedings, Working Group V must proceed with great caution, as the Commission must respect the autonomy of legal persons, which was fundamental to corporate law. His delegation hoped that Working Group VI would soon complete its work on security rights in intellectual property.

68. Generally speaking, the substantial increase in the number of UNCITRAL member States was a welcome sign of a growing interest in its work. Wider membership meant, however, that its current informal practices must be replaced by clearer procedural rules. In that context, it was vital to clarify the meaning of consensus within the working groups, determine the rights and obligations of non-governmental organizations admitted as observers and diversify the languages used at various kinds of informal meetings. If possible, a document on the subject should be adopted at the Commission's next plenary session.

69. **Mr. Virella** (Spain) said that the draft Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea consolidated the previously fragmented rules and satisfactorily addressed the realities of modern international trade, characterized by the boom in container transport and the wider use of electronic procurement. As such, it provided greater legal certainty and substantially reduced the costs of doing business. It should therefore be adopted.

70. **Mr. Jung** Yongsoo (Republic of Korea) said that the United Nations Convention on the Use of Electronic

Communications in International Contracts would enhance legal certainty and commercial predictability when electronic communications were used to conclude international contracts. The enactment of his country's Basic Electronic Transaction Act and Electronic Signature Act in 1999 and the amendment of the former to introduce provisions establishing a certified electronic document storage system, which were based on the UNCITRAL Model Law on Electronic Signatures and the Model Law on Electronic Commerce, clearly demonstrated his Government's commitment to the goals of UNCITRAL.

71. The draft Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea (A/63/17, annex I) would promote the unification of maritime law and enhance predictability for industry. His delegation supported the draft Convention's provisions on electronic documents, delays, multimodal transport, right of control and concealed damage, but it was of the opinion that, since the limits of the carrier's liability for breaches of obligations were even higher than those stipulated in the Hague-Visby Rules, they might place an excessive burden on domestic carriers, especially in view of recent developments in packing methods, which allowed the shipper to divide goods into a large number of packages. Raising the carrier's limit of liability would automatically lead to higher insurance costs, which would be disadvantageous for both the carrier and the shipper. For that reason, the limit laid down in the Hague-Visby Rules was adequate for commercial purposes.

72. The definition of volume contracts in article 1, paragraph 2, which did not specify a threshold, was too vague and might enable large shippers to evade their obligation or liability and leave small shippers without sufficient protection. That definition should therefore include more specific guidelines and lay down a minimum volume, below which no derogation from the Convention could be made. He requested the Secretariat to carry out a cost/benefit analysis of the draft Convention in order to clarify the advantages and disadvantages of the draft Convention for member States and industry.

73. The finalization and adoption of the draft Legislative Guide on Secured Transactions was welcome, because it would allow the utilization of the full value inherent in a broad range of intellectual property assets as security for credit. Since, in practice,

secured transactions and insolvency were two sides of the same coin, the best way to decide how to treat security rights granted by the licensor in the event of the licensee's insolvency would be to hold a joint session of Working Groups V (Insolvency Law) and VI (Security Interests).

74. He hoped that the deliberations of Working Groups II (Arbitration and Conciliation) and I (Procurement) would advance to a stage where draft texts could be submitted by 2009.

75. **Mr. Heidari** (Islamic Republic of Iran) said that when the Commission and its Secretariat offered technical assistance, they should pay special attention to the needs of the developing and least developed countries, which should be helped to upgrade their national legal capacity so that they could benefit from advances in communications and other technologies which would promote trade and commerce.

76. The purpose of the rules governing the international carriage of goods by sea should be to facilitate international trade, and they must therefore strike a delicate balance between the interests of carriers, shippers and third parties. Due consideration should be given to preserving maritime safety, protecting the marine environment and ensuring that commercial ships were properly crewed. While the draft Convention would help to settle potential disputes between shippers, carriers and third parties, it was regrettable that it did not reflect the views of a large number of developing countries, whose concerns regarding draft article 18 on the basis of liability had not been addressed in the text. If they had been, more countries would be willing to become parties to the Convention.

77. In its revision of the UNCITRAL Arbitration Rules, Working Group II should not alter the structure of the text, its spirit or its drafting style. The flexible nature of the provisions must be retained, rather than making them more complex. For that reason, the Commission's decision not to include specific provisions on treaty-based arbitration in the Rules was welcome. Generally speaking, confidentiality rather than publicity constituted the cornerstone of arbitration, including in investor-State disputes. The question of arbitrators' liability was a matter of public policy and was dealt with in various ways in different jurisdictions. It should not therefore be regulated in a multilateral document. If arbitration agreements were

not recorded in writing, that omission might create confusion as to the intent of the parties and the terms of the agreement between them. It should therefore be stated that an agreement in writing might be dispensed with only when there was evidence to prove the existence of an oral agreement.

78. It was essential to ensure the more effective participation of the developing countries in the process of harmonizing and unifying international trade law. He therefore encouraged the Commission to reflect on practical ways of facilitating the participation of the representatives of all legal systems in its activities, and he urged host countries to honour their international obligations regarding the issue of entry visas to enable representatives of member States to attend the Commission's meetings.

79. **Mr. Moreno Zapata** (Bolivarian Republic of Venezuela) said that the progress achieved by Working Group I (Procurement) in revising the UNCITRAL Model Law on Procurement of Goods, Construction and Services with Guide to Enactment to include new methods of public procurement and by Working Group II (Arbitration and Conciliation) in finding solutions to disputes through arbitration were of great importance. The search for alternative solutions in the field of trade and investment must employ a common method which was of benefit to all States. His Government had taken note of the request for information regarding its practices with respect to transparency in investor-State arbitration.

80. The draft Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea, which contained modern, unifying provisions, would help to solve the problems of international maritime trade and would benefit the world economy. Similarly, the draft Legislative Guide on Secured Transactions was a standard-setting instrument addressing an aspect of international trade which was of growing importance for global trade relations.

81. **Mr. Sheeran** (New Zealand) said that the Commission's arrangements for observer States such as New Zealand afforded them an excellent opportunity to participate in the Commission's work. As for the draft Convention on the Carriage of Goods, it consolidated the law on the subject and introduced practical improvements that catered to modern supply chain methods and the advent of electronic commerce. He was, however, unsure whether the contracting out

provisions were an improvement on the Hague-Visby Rules, since the wide level of contracting out that was possible under the draft Convention might result in disaggregation rather than harmonization and might lead to an imbalance of power in contractual negotiations.

82. It would be advisable to make the scope of the Convention plainer and to specify clearly the period of responsibility of the carrier. Provided that guidance and support were given, the draft Convention could be successfully implemented and would inspire the confidence of the international trading community.

83. **Mr. Rakovec** (Slovenia) said that the large number of States which had ratified the Convention on the Recognition and Enforcement of Foreign Arbitral Awards in the fifty years since its adoption evidenced the importance of the Commission's work in furthering the progressive harmonization and unification of international trade law. The Commission's completion and adoption of the draft Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea was welcome, as was the Commission's decision to play a role in the Organization's strengthened and coordinated activities to promote the rule of law at the national and international levels. The implementation and effective use of modern private law standards in international trade would foster good governance and the rule of law.

The meeting rose at 1 p.m.